**STATE OF ILLINOIS**
**HUMAN RIGHTS COMMISSION**

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| IN THE MATTER OF: | ) | |
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| CARL R. MENEFEE, SR., | ) | |
| | ) | |
| | ) | |
| Complainant, | ) | CHARGE NO(S): 2007CF3712 |
| | ) | EEOC NO(S): N/A |
| and | ) | ALS NO(S): 08-0062 |
| | ) | |
| CONTINENTAL AIR TRANSPORT, INC., a/k/a CATCO , | ) | |
| | ) | |
| | ) | |
| Respondent. | ) | |

**NOTICE**

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS )
HUMAN RIGHTS COMMISSION ) Entered this 7th day of January 2011

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS**
**HUMAN RIGHTS COMMISSION**

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| **IN THE MATTER OF:** | ) | |
| | ) | |
| **CARL R. MENEFEE, SR.** | ) | |
| | ) | |
| **Complainant,** | ) | **ALS NO.: 08-062** |
| | ) | **CHARGE NO.: 2007CF3712** |
| **v.** | ) | **EEOC NO.: N/A** |
| | ) | |
| **CONTINENTAL AIR TRANSPORT, INC., a/k/a CATCO,** | ) | |
| | ) | |
| **Respondent.** | ) | |

## RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's motion for summary decision. Respondent filed its motion along with affidavits and exhibits on March 10, 2009. Complainant filed a response to the motion along with an affidavit and exhibits on March 17, 2009 and Respondent filed a reply on April 20, 2009.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter and is, therefore, named herein as an additional party of record.

## CONTENTIONS OF THE PARTIES

Respondent contends that summary decision must be granted because the undisputed facts show that Complainant was not subjected to race, age or gender discrimination nor was he subjected to illegal retaliation. Complainant contends that summary decision must be denied because issues of fact remain as to his discrimination claims.

## FINDINGS OF FACT

The following facts were derived from uncontested facts in the record and were not the result of credibility determinations. All evidence was viewed in the light most favorable to Complainant.

1. Respondent's business is a transportation company that transports passengers to and from Chicago area airports.

2. Complainant is a black male and was 52 years old at the relevant time.

3. Complainant was a former commercial passenger driver for Respondent.

4. Respondent discharged Complainant on November 15, 2006.

5. On January 24, 2007, Complainant filed an amendment to a charge filed on November 16, 2006 (Charge Number 2007CA1384). On August 29, 2007, the Department assigned Charge Number 2007CF3712 to the amendments, which included four counts of alleged discrimination for failure to verify employment based on race, age, gender and retaliation. This Complaint, based on the allegations in Charge Number 2007CF3712, was filed with the Commission on February 7, 2008.

6. Complainant applied for a temporary accounting position as an accountant with a firm by the name of Accountemps. On November 28, 2006, Complainant completed an employment application and an employment verification form as part of the application process for the Accountemps position. Complainant listed Respondent and Respondent's address as one of his previous employers on the employment verification form.

7. On January 22, 2007, Accountemps telephoned Respondent to verify Complainant's employment with Respondent. This was Accountemps's first attempt to verify Complainant's employment with Respondent.

8. Shortly after January 22, 2007, Accountemps received confirmation from the director of human resources at Respondent that Complainant was employed by Respondent as a driver from June, 2005 until November, 2006.

## CONCLUSIONS OF LAW

1. The Illinois Human Rights Commission has jurisdiction over the parties and subject matter of this Complaint.
2. Respondent is a *person* as defined by section 5/6-101 of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.*
3. Respondent is not an *employer* as contemplated by section 5/2-102 of the Act.
4. Complainant is an aggrieved party as defined by section 5/1-103(B) of the Act.
5. This record presents no material issues of fact as to Complainant's race, age and gender discrimination claims.
6. This record presents no material issues of fact as to Complainant's claim of illegal retaliation.

## DETERMINATION

Respondent is entitled to summary decision in its favor on all counts.

## DISCUSSION

Age, race and gender claims

Complainant alleges that he was subjected to discrimination based on his age, race and gender when Respondent refused to verify his past employment to a prospective employer, Accountemps. Accountemps is an employment agency that hires employees for temporary accounting jobs. Complainant applied for a position with Accountemps on November 28, 2006, by completing an employment application and an employment verification form. Complainant indicated Respondent and Respondent's address on the employment verification form. Complainant argues that Respondent did not verify his past employment until February 7, 2007, seventy-two days after he completed the November 28, 2006 verification form and that this delay resulted in Accountemps not assigning him temporary work.

Although Respondent does not make the following argument, I address an important issue of fact. Here, the undisputed facts show that Complainant had no employment relationship with Respondent at the time of the alleged discriminatory act. I addressed this same issue in a previous case. In *Menefee and City of Chicago, Dept. of Planning*, ALS No. 06-457, June 13, 2007, the complaint alleged discrimination claims based on race and age. There, complainant argued that his past employer gave a negative employment reference to a prospective employer, which resulted in him being denied the new job.

In that case, I relied on two federal Title VII cases, *Alexander v. Rush North Shore Medical Center, 101 F3d 487, 492 (7th Cir 1996) and Toney v. St Francis Hospital, 169 F. Supp. 2d 822 (N.D. Ill 2001).* In *Toney*, the plaintiff brought a four-count complaint against defendant hospital. Count III and Count IV of the complaint alleged race discrimination and retaliation, respectively, in violation of Title VII of the Civil Rights Act of 1964, § 701 et seq., as amended, 42 U.S.C.A § 2000e et seq. The crux of plaintiff's discrimination and retaliation counts centered around plaintiff's allegation that defendant hospital had given false or negative information about plaintiff's work history to a prospective employer, which resulted in plaintiff being denied the new job. The defendant moved for summary decision on all counts. The court granted summary decision in favor of defendant on the Title VII race discrimination claim based on plaintiff's failure to prove the existence of an employment relationship at the time of the alleged discrimination. The undisputed facts had shown that plaintiff had ceased her employment with defendant hospital in May, 1998 and that the alleged false or negative information was communicated to the prospective employer around August, 1999. Citing *Alexander* (holding that a physician with staff privileges at defendant hospital was precluded from bringing a Title VII discrimination action because of his status as an independent contractor rather than as an employee of the hospital), the court said that plaintiff's failure to prove the existence of an employment relationship between plaintiff and defendant hospital at

the time of the alleged discrimination was fatal to plaintiff's race discrimination claim as a matter of law.

Similarly, as to Complainant's claims of age, race and gender discrimination claims here, the undisputed facts show that no employment relationship existed between Complainant and Respondent from November 20, 2006 until February 7, 2007. Absent such a relationship, Respondent is entitled to summary decision on these counts.

Retaliation

In contrast, the *Toney* district court came to the opposite conclusion on the Title VII retaliation count. In the retaliation claim, the plaintiff alleged that defendant hospital communicated the false or negative information to the prospective employer in *retaliation* against her for having filed previous charges of discrimination against it. Plaintiff alleged that this communication resulted in her being rejected for the new position. On the retaliation issue, the *Toney* court relied on *Ruedlinger v. Jarrett*, 106 F3d 212, 214 (7th Cir 1997), where the federal appeals court acknowledged that "former employees, insofar as they are complaining of retaliation that impinges on their future employment prospects or otherwise has a nexus to employment, do have the right to sue their former employer."

Indeed, this Commission takes the identical position as to retaliation claims against former employers and has specifically ruled that the Act extends to post-termination retaliation claims by a former employee against a former employer. *Campion and Blue Cross and Blue Shield Assoc.*, IHRC, 4577, June 27, 1997.

In this case, Complainant's final count alleges that from November 20, 2006 until January 22, 2007, Respondent refused to verify his past employment when requested to by Accountemps and that this refusal was in retaliation for filing a charge of discrimination against Respondent on November 16, 2006.

Before addressing the undisputed facts related to this retaliation claim, I contemplate whether the Act imposes an affirmative duty on employers to respond to an employment inquiry.

While this type of post-employment retaliation case before the Commission has been addressed in the context of a previous or current employer giving negative, adverse, defamatory or false employment references to a prospective employer in response to an employment reference inquiry ( See, Stelma v. Woodward, IHRC, ALS No. 7356, June 3, 1997 and Jackson v. City of Chicago Dept. of Fire, IHRC, ALS No. 10588, Dec. 1, 2003), my research uncovers no cases that address whether an employer's decision *not* to respond to an employment inquiry can be characterized as retaliatory conduct. Absent the imposition of such a duty, Complainant's allegation that Respondent did not verify his employment in response to the inquiry of a prospective employer would not present a claim cognizable under the Act.

Notwithstanding, here the facts show that Respondent indeed responded to the request by Accountemps for an employment reference for Complainant. Respondent puts forth the affidavit of Daniel Eick. Eick avers that he is currently employed by Accountemps as a regional manager and that he reviewed Complainant's file kept in the ordinary course of business. Eick states that Accountemps made its first attempt to verify Complainant's employment with Respondent on January 22, 2007 by telephone call. Eick goes on to state that Accountemps received confirmation that Complainant was employed by Respondent from Respondent's human resources department shortly after January 22, 2007.

Complainant attempts to counter this evidence with his own affidavit, stating that, on January 23, 2007, Brian Keating told Complainant that Respondent refused to verify his past employment. This statement is insufficient to defeat the averments made by Eick because Complainant does not identify Brian Keating and fails to establish foundation for Keating's knowledge. Further, assuming that Brian Keating was an Accountemps employee with foundational knowledge, such facts are consistent with Eick's averments that Accountemps did not initially contact Respondent for a verification until January 22, 2007, and that Respondent submitted the verification shortly thereafter.

This matter is being considered pursuant to Respondent's motion for summary decision. A summary decision is analogous to a summary judgment in the Circuit Court. *Cano v. Village of Dolton*, 250 Ill. App. 3d 130, 620 N.E.2d 1200 (1st Dist 1993). A motion for summary decision is to be granted when the pleadings, depositions, exhibits and affidavits on file reveal that no genuine issue of material fact exists and establish that the moving party is entitled to judgment as a matter of law. See, Section 5/8-106.1 of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.*, and *Young v. Lemons*, 266 Ill. App. 3d 49, 51, 203 Ill. Dec. 290, 639 N.E.2d 610 (1st Dist. 1994). In determining whether a genuine issue of material fact exists, the record is construed in the light most favorable to the non-moving party, and strictly against the moving party. *Gatlin v. Ruder*, 137 Ill. 2d 284, 293, 148 Ill. Dec .188, 560 N.E.2d 586 (1990); *Soderlund Brothers, Inc., v. Carrier Corp.,* 278 Ill. App. 3d 606, 614, 215 Ill. Dec. 251, 663 N.E.2d 1 (1st Dist. 1995). A summary order is a drastic method of disposing of a case and should be granted only if the right of the moving party is clear and free from doubt. *Loyola Academy v. S&S Roof Maintenance, Inc.,* 146 Ill.2d 263, 271, 166 Ill. Dec. 882, 586 N.E.2d 1211(1992); *McCullough v Gallaher & Speck*, 254 Ill. App. 3d 941, 948, 194 Ill. Dec. 86, 627 N.E.2d 202 (1st Dist. 1993).

Although Complainant is not required to prove his case to defeat the motion, he is required to present some factual basis that would arguably entitle him to a judgment under the law. *Brick v City of Quincy*, 241 Ill. App. 3d 119, 608 N.E.2d 920, 181 Ill. Dec .669 (4th Dist. 1993) citing, *inter alia, West v Deere & Co.,* 145 Ill. 2d. 177, 182, 164 Ill. Dec. 122, 124, 582 N.E.2d 685, 687 (1991).

This record presents no material issues of fact as to Complainant's claims of age, race or gender discrimination, nor as to Complainant's claim of illegal retaliation; thus, Respondent is entitled to summary decision on all counts. Due to this decision, all previously scheduled status dates are hereby stricken.

## RECOMMENDATION

Accordingly, I recommend that the Complaint and underlying Charges be dismissed with prejudice.

**HUMAN RIGHTS COMMISSION**

**April 15, 2010**

**SABRINA M. PATCH**
**Administrative Law Judge**
**Administrative Law Section**